

Inventors: Yeaman and Shen  
Serial No.: 09/648,816  
Filed: August 25, 2000  
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### **REMARKS**

Claims 67-79 are pending and under examination in the above-identified application.

#### **Double Patenting Rejection**

The rejection of claims 69 and 75 under the judicially created doctrine of obviousness-type double patenting as allegedly obvious over claim 1 of copending U.S. Patent No. 6,743,769, is respectfully traversed. Applicants respectfully request that this rejection be held in abeyance until there is an indication of allowable subject matter at which time Applicants will file a Terminal Disclaimer if appropriate.

#### **Rejections under 35 U.S.C. § 102**

Applicants respectfully traverse the rejection of claims 67 and 68 under 35 U.S.C. § 102(b), as allegedly anticipated by United States Patent No. 5,409,898, to Darveau et al.

Darveau et al. are alleged to disclose d-amino acids of the peptide **Ala-Leu-Tyr-Lys-Lys-Leu-Leu-Lys-Lys-Leu-Leu-Lys-Ser-Ala-Lys-Lys-Leu-Gly**, this disclosing an analog having the sequence, in relevant part, **dAla-dLeu-dTyr-dLys-dLys-dLeu-dLeu**. In the current Office Action, the Examiner has conceded that the Darveau et al. peptides, which include non-identical amino acid residues at several positions, do not anticipate the claimed peptides comprising a core of 7 amino acid residues and synthetic analogs thereof. However, the Examiner now takes the position that d-amino acids of non-identical natural amino acid residues of Darveau et al. anticipate the claimed invention. It is respectfully submitted that d-amino acid substitutions of the amino acids residues of Darveau et al., which are neither identical to nor analogs of the recited residues, cannot anticipate claims 67 and 68. Darveau et al. has Leu-Leu at positions corresponding to aa6 and aa7. Substituting dLeu-dLeu at aa6 and aa7 represents synthetic analogs of the

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residues recited by Darveau et al. but not of the distinct amino acid residues recited in claim 67. Claim 67 requires that (1) one of aa6 and aa7 is selected from the group consisting of phenylalanine, tryptophan and tyrosine. dLeu is not a synthetic analog of phenylalanine, tryptophan or tyrosine. Accordingly, removal of the rejection of claims 67 and 68 under 35 U.S.C. § 102(b), as allegedly anticipated by United States Patent No. 5,409,898, to Darveau et al. respectfully is requested.

### CONCLUSION

In light of the Remarks herein, Applicants submit that the claims are now in condition for allowance and respectfully request a notice to this effect. Should the Examiner have any questions, he/she is invited to call the undersigned attorney.

Respectfully submitted,

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